



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 501

## IN THE MATTER OF EDWARD O'TOOLE

### DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Edward O'Toole ("O'Toole") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 12, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that O'Toole had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on September 27, 1994, voted to find reasonable cause to believe that O'Toole violated G.L. c. 268A, §3.

The Commission and O'Toole now agree to the following facts and conclusions of law:

1. At all times here relevant, O'Toole was employed by the Massachusetts Highway Department ("MHD") as a civil engineer. As such, O'Toole was a state employee as that term is defined in G.L. c. 268A, §1.
2. Middlesex Paving Corporation ("Middlesex") is a group of affiliated companies doing business in Massachusetts. Middlesex performs a variety of construction services including maintenance and street paving. A substantial portion of Middlesex's business consists of state contracts.
3. As a MHD civil engineer, O'Toole was responsible for supervising and inspecting work performed by state contractors, including Middlesex.
4. During 1991, Middlesex had successfully bid for MHD contracts valued at over \$4 million. These contracts were awarded to Middlesex as the lowest qualified bidder.
5. On December 21, 1991, Middlesex hosted a Christmas party at the Marriott Long Wharf Hotel in Boston. The explicit purpose of the party was to foster goodwill with employees and individuals doing business with Middlesex. The party included cocktails, dinner, entertainment and overnight hotel accommodations for certain guests.
6. O'Toole and his wife attended the Middlesex party and stayed overnight at the Marriott as Middlesex's guests. The cost to Middlesex was approximately \$170.
7. During 1992, Middlesex had successfully bid for MHD contracts valued at \$28 million. These contracts were awarded to Middlesex as the lowest qualified bidder.
8. On December 19, 1992, Middlesex hosted a Christmas party at the Marriott Long Wharf Hotel in Boston. The explicit purpose of the party was to foster goodwill with employees and individuals doing business with Middlesex. The party included cocktails, dinner, entertainment and overnight hotel accommodations for certain guests.

9. O'Toole and his wife attended the Middlesex party and stayed overnight at the Boston Harbor Hotel as Middlesex's guests. The cost to Middlesex was approximately \$250.

10. Section 3(b) of G.L. c. 268A prohibits a state employee from accepting anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him. Anything with a value of \$50 or more is of substantial value for §3 purposes.<sup>1/</sup>

11. By receiving \$50 or more in entertainment and hotel accommodations from Middlesex while, as a MHD civil engineer, he was supervising Middlesex's contracts, and where he had been involved in prior Middlesex contracts and was likely to be involved in future Middlesex contracts, O'Toole received gifts of substantial value for or because of acts within his official responsibility performed or to be performed by him.<sup>2/</sup> In so doing, O'Toole violated G.L. c. 268A, §3(b).<sup>3/</sup>

12. The Commission is aware of no evidence that the entertainment referenced above was provided to O'Toole with the intent to influence any specific act by him as a MHD civil engineer or any particular act within his official responsibility. The Commission is also aware of no evidence that O'Toole took any official action concerning any Middlesex contracts in return for the gratuities. However, even though the gratuities were only intended to foster official goodwill, they were still impermissible.<sup>4/5/</sup>

13. O'Toole fully cooperated with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by O'Toole, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by O'Toole:

(1) that O'Toole pay to the Commission the sum of one thousand dollars (\$1,000.00) for violating G.L. c. 268A, §3(b);<sup>6/</sup>

(2) that O'Toole will act in conformance with the requirements of G.L. c. 268A in his future conduct as a state employee; and

(3) that O'Toole waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

**Date: October 12, 1994**

<sup>1/</sup> In the past, the Commission has considered entertainment expenses in the amount of \$50 to constitute "substantial value". *P.E.L. 88-1*. See *Commission Advisory No. 8* (issued May 14, 1985).

<sup>2/</sup> For §3 purposes, it is unnecessary to prove that any gratuities given were generated by some specific identifiable act performed or to be performed. In other words, no specific *quid pro quo* corrupt intent need be shown. Rather, the gift may simply be an attempt to foster goodwill. It is sufficient that a public official, who was in a position to use his authority in a manner that would affect the giver, received a gratuity to which he was not legally entitled, regardless of whether that public official ever actually exercised his authority in a manner that benefitted the gift giver. See *Commission Advisory No. 8*. See also *United States v. Standerfer*, 452 F. Supp. 1178, (W.D.P.A. 1978), *aff'd* other grounds, 447 U.S. 10 (1980); *United States v. Evans*, 572 F.2d 455, 479-482 (5th Cir. 1978).

<sup>3/</sup> As the Commission stated in *In re Michael*, 1981 SEC 59, 68,

A public employee need not be impelled to wrongdoing as a result of receiving a gift or a gratuity of substantial value in order for a violation of Section 3 to occur. Rather, the gift may simply be an attempt to foster goodwill. All that is required to bring Section 3 into play is a nexus between the motivation for the gift and the employee's public duties. If this connection exists, the gift is prohibited. To allow otherwise would subject public employees to a host of temptations which would undermine the impartial performance of their duties, and permit multiple remuneration for doing what employees are already obligated to do — a good job.

<sup>4/</sup> As discussed above in footnote 2, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however,

as there was no such *quid pro quo* between Middlesex and O'Toole.

<sup>5/</sup> In a similar disposition agreement, Middlesex acknowledged violating §3(a) by providing the above entertainment to O'Toole, who as a MHD civil engineer had performed and would perform official acts regarding Middlesex's state contracts.

<sup>6/</sup> O'Toole reimbursed Middlesex the \$250 cost of the 1992 gratuity after being informed that his actions probably violated the conflict of interest law. He did not reimburse Middlesex for the 1991 gratuity. The \$1,000 fine is three times the approximate value of \$420 in prohibited gratuities (minus the \$250 reimbursement) received by O'Toole in violation of §3.